



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 85- 181

A. J. Albertini
Crawford County Commission
312 Webster Street
Pittsburg, Kansas 66762

Re: Taxation -- Miscellaneous Provisions -- Transfer of
Moneys From County General Fund

Synopsis: A board of county commissioners' use of general fund moneys directly toward a road and bridge obligation does not violate the dictates of K.S.A. 79-2934. Although this statute prohibits a county from transferring moneys from its general fund to any other specific fund, it sets no limitations on the purposes for which moneys from the general fund can be directly spent. Cited herein: K.S.A. 79-1946; 79-2927; 79-2934; Kan. Const., Art. 11, §5.

* * *

Dear Mr. Albertini:

As a member of the Board of County Commissioners of Crawford County, you request our opinion as to the legality of transferring moneys from the county general fund. Specifically, you inform us that the commission has recently made two payments to a construction company, under your protest, for work performed on several different road projects in the county. One payment was made from the road and bridge fund in August, while the second came from the general fund sometime later. Although the billing covered six different projects dating back to 1981, and totaled almost \$100,000, you do not question that the work was actually performed for the county, or that the money was actually owed to the

construction company. Rather, you question the payment of the bill because of its tardiness, and because the county used its general fund moneys to satisfy its road and bridge obligations.

This office is unable to offer an explanation for the tardiness of the bill, but we have been informed by the Crawford County engineer that the road and bridge construction work, over which this dispute has arisen, was satisfactorily performed and completed by the construction company. Further, we concur with your belief that moneys cannot be diverted from one county fund to another. This conclusion is supported by K.S.A. 79-2934, which states in relevant part:

"No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law"

In our opinion, the statute prohibits the county from transferring moneys from its general fund to any other specific fund, i.e. the road and bridge fund. However, we believe the statute sets no limitations on the manner in which moneys from the general fund can be directly spent on specific expenditures for the county. We believe that a county commission's expenditure of general fund moneys directly toward a road and bridge obligation does not violate the dictates of K.S.A. 79-2934. This conclusion is consistent with the Kansas Supreme Court's decision in School Dist. No. 40, Ford County v. Board of Comm'rs of Clark County, 155 Kan. 636, modified 156 Kan. 221 (1942), and with prior Attorney General Opinion No. 76-277, issued by Attorney General Schneider in 1976, which addressed a similar problem.

In School Dist. No. 40, Ford County v. Board of Comm'rs of Clark County, the court examined the legal effect of Article 11, §5 of the Kansas Constitution. That section states:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

The court established the general rule that where money is raised by levy of taxes for specific purposes, it may not be diverted to another purpose. Although we agree with this interpretation of legislative intent, in our opinion this section is not applicable to the situation at hand. The

moneys which were expended to meet the road and bridge obligation of Crawford County was raised for the general purpose of meeting the general expenses of the county. This general levy is authorized by K.S.A. 79-1946, which states in relevant part:

"The board of county commissioners of each of the several counties is hereby authorized to fix a rate of levy annually to meet and defray the current general expenses of the county"

Thus, it is our opinion that this transfer of funds was both constitutionally and statutorily authorized.

In Attorney General Opinion No. 76-277, the question of whether a city may budget moneys for bond and interest purposes and expenditures in its general fund was addressed. The opinion noted that although the precise limits of permissible expenditures from the general fund has never been clearly defined, there are no statutory restrictions or delineations of the permissible uses of a city general fund. The opinion described the purpose of the general fund as such:


"Defined in a most general sense, the general fund is the fund for which the municipality accounts for all revenues and expenditures for which it does not make provision by other funds. Certainly, there is no statutory or constitutional basis for a conclusion that the payment of municipal indebtedness or interest thereon is, as a matter of law, an unlawful general fund expenditure, or a purpose for which general fund monies may not be spent."

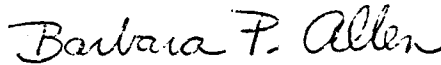
The opinion concluded that there was no constitutional or statutory reason why the proceeds of a general fund levy could not be expended for payment of municipal indebtedness and interest therein. Likewise, we believe nothing prohibits a county from expending moneys in its general fund for the direct payment of a road and bridge obligation, assuming that the expenditure has been budgeted pursuant to K.S.A. 79-2927. Just as the former opinion's conclusion was unaffected by the existence of a separate bond and interest levy made for the identical purpose, we find the use of the general fund for this special purpose expenditure to be legal, notwithstanding

the existence of a separate road and bridge fund which could also have been used to satisfy the county's obligation.

In conclusion, it is our opinion that a county commission's use of general fund moneys directly toward a road and bridge obligation does not violate the dictates of K.S.A. 79-2934. Although this statute prohibits a county from transferring moneys from its general fund to any other specific fund, it sets no limitations on the purposes for which moneys from the general fund can be directly spent.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Barbara P. Allen
Assistant Attorney General

RTS:JSS:BPA:crw